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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 KEMAH HENDERSON,
21 TAQUONNA LAMPKINS,
22 CAROLYN SALAZAR and
23 TAMANA DALTON, individually
24 and on behalf of all others similarly
25 situated,

26 Plaintiffs,

27 vs.

28 JPMORGAN CHASE BANK, and
DOES 1 through 50, inclusive,

Defendants.

Case No. 2:11-CV-03428 PSG (PLAx)

**PLAINTIFFS' REQUEST FOR
CLARIFICATION OF SCOPE OF
TRIAL**

Pretrial Conference:
February 12, 2018 at 2:30 p.m.

Trial:
February 27, 2018 at 9:00 a.m.

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1 Plaintiffs respectfully request this Court to clarify its order of November 21,
 2 2017, which set dates for trial and the pretrial conference. In particular, Plaintiffs
 3 seek clarification of whether the Court has precluded them from proceeding under
 4 PAGA on a representative action basis – *i.e.*, on behalf of the State of California *and*
 5 other “aggrieved employees” within the meaning of PAGA – or only with respect to
 6 what Defendant JPMorgan Chase characterizes as those Plaintiffs’ “individual”
 7 PAGA claims. The difference, of course, determines the scope of relevant
 8 discovery, the scope and nature of trial evidence,¹ the length of trial, and the legal
 9 issues to be decided.

10 Plaintiffs have met and conferred with Defendant several times on this issue
 11 prior to bringing this motion and continue to discuss aspects of the trial.

12 If this Court intended to rule that Plaintiffs may only proceed on an
 13 individual, non-representative basis, Plaintiffs respectfully request that this Court
 14 certify that ruling for interlocutory appeal pursuant to 28 U.S.C. §1292(b). Plaintiffs
 15 did not plead any individual PAGA claims and do not believe that the California
 16 Legislature intended to permit PAGA claims to proceed on an individual, non-
 17 representative basis. *See Iskanian v. CLS Transportation Los Angeles, LLC*, 59
 18 Cal.4th 348, 384 (2016) (“whether or not an individual claim is permissible under
 19 the PAGA, a prohibition of representative claims frustrates the PAGA’s
 20 objectives”); *Reyes v. Macy’s, Inc.*, 202 Cal. App. 4th 1119, 1123 (2012) (“plaintiff
 21 may not and does not bring the PAGA claim as an individual claim, but ‘as the
 22 proxy or agent of the state’s labor law enforcement agencies.’ (*Arias v. Superior*
 23 *Court* (2009) 46 Cal.4th 969, 986, 95 Cal.Rptr.3d 588, 209 P.3d 923.)”

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 25
 26 ¹ For example, whether Plaintiffs will need to incur the significant costs of
 27 engaging survey and ergonomics experts to conduct statewide analyses and
 28 whether percipient witnesses will be required to testify as to Defendant’s
 statewide practices and all branch configurations.

1 Certification for interlocutory review under 28 U.S.C. §1292(b) is appropriate
2 “[w]hen a district judge, in making in a civil action an order not otherwise
3 appealable..., shall be of the opinion that such order involves a controlling question
4 of law as to which there is substantial ground for difference of opinion and that an
5 immediate appeal from the order may materially advance the ultimate termination of
6 the litigation.”

7 Here, the issue is whether plaintiffs in a PAGA action may be precluded from
8 proceeding on a representative basis on behalf of the State *and* other aggrieved
9 employees, and thus be limited to seeking PAGA civil penalties only for violations
10 of Labor Code violations committed against themselves individually. Stated another
11 way, if the Court takes the position that the State can choose to seek civil penalties
12 under the Labor Code and PAGA for an individual employee only, then can the
13 Court thereby preclude the State from seeking relief for multiple employees if the
14 State alleges that more than one employee is aggrieved. Plaintiffs’ position is that
15 even if the Court and Defendant were correct that State enforcement officials *could*
16 exercise their discretion in a particular case to pursue remedies for only a single
17 employee, that does not mean the State, and through its proxies, could not choose to
18 exercise its discretion to seek Labor Code relief for a broader group of employees.

19 There is difference of opinion as to that question, as shown by the contrary
20 positions taken by the parties in their briefs. Resolution of that question by the Ninth
21 Circuit may materially advance the ultimate termination of the litigation because it
22 would avoid the potential need for a second trial, on behalf of all other aggrieved
23 employees who worked as tellers for JPMorgan Chase in California during the
24 applicable limitations period – a trial that would be required, if Plaintiffs’
25 construction of PAGA is correct, regardless of the outcome of any individual-only
26 trial. Moreover, to the extent the Court allows the parties in an individual-only trial
27 to present evidence of other tellers’ circumstances or the nature of work at branches
28 other than those in which Plaintiffs were employed, obtaining a ruling from the

1 Ninth Circuit on this apparently unresolved legal issue would avoid unnecessary and
2 expensive duplication of effort.

3 December 21, 2017

Respectfully submitted,

4
5 /s/ Kevin J. McInerney

6 Kevin J. McInerney

7 *Attorney for Plaintiffs Henderson*
8 *and Lampkins*

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Washoe, State of Nevada. I am over the age of eighteen (18) years and not a party to the within action; and that my business address is 18124 Wedge Parkway, #503, Reno Nevada, 89511. On December 21, 2017, I served the foregoing document(s) described as:

1) PLAINTIFFS' REQUEST FOR CLARIFICATION OF SCOPE OF TRIAL

on all interested parties in this action addressed to the addressee as follows:

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XX By CM/ECF- I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the above CM/ECF registrant(s).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 21, 2017, at Reno, Nevada.

 /s/ Kevin J. McInerney
 Kevin J. McInerney